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in the

Supreme Court

of the

United States

OCTOBER TERM, 1970

No. 1572

ROBERT L. STEPHENS,
Petitioner,

vs.

FLORIDA REAL ESTATE COMMISSION
and CORNELIUS L. REAGAN,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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West Morse Boulevard
Winter Park, Florida 32789

in the Supreme Court of the United States

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Respondents pray that a Writ of Certiorari be denied.

JURISDICTION

This Court does not have jurisdiction in this cause under the provisions of 28 U.S.C., Sec. 1257(3) in that the judgment of the Supreme Court of Florida rests on a non-federal ground, and the Petition does not present a substantial federal question.

STATEMENT OF FACTS

Respondents present the following additional facts: The closing check payable to Mrs. Shaw was in the amount of $23,146.67. Petitioner did not deposit the closing check to Mrs. Shaw's bank account in accordance with her instructions, nor to an escrow or trust account. Instead the Petitioner, without the knowledge, consent or authority of Mrs. Shaw, endorsed her name to the check. He presented it to an officer of the bank representing that Mrs. Shaw had endorsed the check. On such representation he obtained a cashier's check in the same amount payable to himself. The Petitioner then deposited the cashier's check in a bank account which he used for business and personal expenses. Thereafter, the Petitioner (admittedly) used the money to pay his own business and personal expenses. Subsequent to the closing and receipt of the proceeds the Petitioner falsely represented to Mrs. Shaw that the transaction had not closed.

Petitioner was represented by counsel at the hearing before the Hearing Examiner and at all adjudicatory hearings of the Respondent Florida Real Estate Commission.

REASONS FOR DENYING THE WRIT

Petitioner admits failure to perfect appeal in Florida Supreme Court (Petitioner's Brief page 7). The order of the Florida Supreme Court is based upon a non-federal ground and therefore this Court is without jurisdiction to review such order. See *John v. Paullin*, 231 U.S. 583, 34 S.Ct. 178, 58 L.Ed. 381 (1913):

> "As the supreme court of the state did not pass upon the merits of the case or upon the correctness of any of the rulings below, but, on the contrary, held that it was powerless to do so because its appellate jurisdiction was not invoked in accordance with the laws of the state, we do not perceive any theory upon which its judgment of dismissal may be reviewed by us consistently with the familiar limitations upon our authority. See Rev. Stat. § 709; * * * Judicial Code, § 237. Certainly no Federal right was denied by that court, and if, as was held by it, its appellate jurisdiction was not properly invoked no Federal Question was before it for decision."

A witness in an administration investigation is not entitled to counsel. See *In Re Groban*, 352 U. S. 330, 77 S.Ct. 510, 1 L.Ed. 2d 376 (1957).

Constitutional provisions barring cruel and unusual punishments have no application to proceedings construed to be civil rather than criminal. See *21 Am. Jur. 2d Criminal Law* #610. Proceedings before an administrative agency are civil rather than criminal. See *2 Am. Jur. 2d Administrative Law #320.*

The Judgment of the Florida Supreme Court is based on a non-federal question and there is no reviewable substantial federal question presented by the Petitioner. It clearly appears that this case does not warrant review by this Court.

CONCLUSION

For the reasons presented the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

(SIGNED) ROBERT L. POWE

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PROOF OF SERVICE

STATE OF FLORIDA)
COUNTY OF ORANGE)

I, ROBERT L. POWE, Counsel for the Respondents, FLORIDA REAL ESTATE COMMISSION and CORNELIUS L. REAGAN, depose and say that on the 28 day of May, 1971, I served three copies of Respondents' Brief in Opposition to Petition for Writ of Certiorari on George A. Shahood and A. J. Ryan, Jr. Attorneys for Petitioner herein, by mail to 140 South Federal Highway, Dania, Florida 33004, pursuant to Rule 33, Rules of the Supreme Court of the United States.

(SIGNED) ROBERT L. POWE
ROBERT L. POWE
Counsel for Respondents

SWORN TO and subscribed before my this 28 day of May A. D., 1971.

s/ Katherine G. Evans
Notary Public

My Commission Expires: